

STATE OF ARIZONA • EMERGENCY MEDICAL SERVICES AND TRAUMA SYSTEM

Political Subdivision Contracts for Ambulance Service

This guidance document has been prepared to assist Certificate of Necessity (CON) holders and political subdivisions when entering into contracts for ambulance services. It is meant to provide helpful information on the contract review process, statutes and rules, and common contract problems and possible resolutions.

Specifically, in the following pages the CON holder and political subdivisions will find relevant information on the following topics:

1. An overview of the Arizona Department Health Services' (Department's) goals as they relate to political subdivision contracts (contracts).
2. The Department's statutory and regulatory authority related to political subdivision contracts.
3. The process and methodology used by the Department for conducting the political subdivision contract review.
4. A description of contract provisions that are commonly problematic and resolutions to those problems.

1 – OVERVIEW

The Arizona Legislature passed laws authorizing the Arizona Department of Health Services (Department) to regulate ambulance services in Arizona through a CON system in Arizona Revised Statutes (A.R.S.) Title 36, Chapter 21.1, Article 2. These laws were supplemented by a series of rules to describe how the CON process would work in Arizona Administrative Code (A.A.C.) Title 9, Chapter 25, Article 9. The Bureau of Emergency Medical Services and Trauma System is the program within the Department responsible for implementing these ambulance service statutes and rules.

These statutes and rules provide for cities, towns, or other political subdivisions to enter into contracts for service with a CON holder. These contracts typically establish specific response times, ambulance station locations, medical and communications equipment, and treatment protocols. According to 9 A.A.C. 25, Article 11, the Department reviews and approves all contracts to ensure that they are consistent with CON statutes and rules and will not negatively impact approved ambulance rates and charges.

The Department recognizes that these contracts represent a mutually beneficial arrangement between the CON holder and the political subdivision and makes every effort to support the interests of the parties entering into an agreement. Because the Department is required to review these complex contracts within time-frames established by rule, beginning in 2008 the Department encouraged CON holders and political subdivisions to submit proposed contracts for informal review, thereby allowing the Department and the parties to discuss the intent of contract provisions prior to formal contract submission. The stakeholders have appreciated this improved process as it has allowed them to provide additional information or adjust contract language prior to formal submission, and the Department has benefited through a better understanding of what the parties are seeking, allowing more informed decision-making.

2 – STATUTORY AND REGULATORY AUTHORITY

[A.R.S. § 36-2232. Director; powers and duties; regulation of ambulance services; inspections; response time compliance](#): Requires the Department to adopt rules to regulate ambulance service including rates, response times, service area, and level of service.

[A.R.S. § 36-2234. Hearings; waiver of hearing; emergency action; judicial review](#): Describes the methods for adjusting approved rates; establishes a timeline for political subdivision contract review; describes the Department's obligation to ensure that contract provisions do not adversely impact rates and charges or cause a violation of the ambulance service's CON; and describes the CON holder's right to request a hearing.

[A.A.C. R9-25-1201. Time-frames](#): Provides detail on contract review time-frames.

[A.A.C. R9-25-1104. Ground Ambulance Service Contracts](#): Requires the Department to review all contracts entered into by a CON holder for the provision of ambulance service.

3 – DESCRIPTION OF THE CONTRACT REVIEW PROCESS

Contracts between political subdivisions and CON holders must be approved by the Department. The purpose of the contract review process is to evaluate contract provisions to determine their potential impact on Department-approved rates and charges, ensure consistency with CON statutes and rules, and identify potential improvements in the quality of service through enhanced outcomes or system operations. A CON holder may wish to obtain the Department's analysis of a contract before formal submission. The benefits are outlined below. Alternatively, a CON holder may move directly to formal submission.

Informal Submission: If the contract is submitted for an informal review, no specific time-frames are triggered. The review process is similar to a formal submission but usually incorporates one or more face-to-face meetings to provide the Department with additional information and for the Department to communicate concerns about contract provisions that may have a negative impact on rates and charges or might be in conflict with statutes or rules. Following an informal review, the CON holder will receive a description of issues or concerns from the Department and have an opportunity to address them before formally submitting the contract for approval. Because the Department has had an opportunity to discuss the content with the parties, the formal review process is typically much shorter.

Formal Submission: Upon receipt of a proposed contract, the Department records the date received and issues a control number to the proposed contract to track administrative time-frames. The contract is initially reviewed to ensure that the information required in A.A.C. R9-25-1104 is included, indicating that the contract is administratively complete. The Department then undertakes a substantive review to identify any issues which may require clarifying information being requested from the CON holder in order to complete the review process. The Department may make a comprehensive written request for additional documents or information to address identified issues. Once the Department has completed its review, the Department may approve or disapprove the contract. If a contract is not approved, the CON holder has the right to an administrative hearing.

4 – COMMON PROBLEMS AND RESOLUTIONS

Additional Ambulance Equipment: Contracts submitted for review almost always include language that allows the political subdivision, upon prior written notice to the CON holder, to add equipment, goods, or products to the list contained in the submitted contract.

- **Resolution:** The Department understands that system equipment needs change and that it is important that the ambulance be equipped similarly to other system partners. The Department also recognizes that making these changes without revisiting the contract is appropriate. To that end, the Department will approve language requiring the CON holder to invest in new equipment when there is sufficient justification provided that the equipment will improve patient care, the CON holder has an avenue to provide input into the decision process, and the proposed dollar value is not likely to have a negative impact on rates and charges.

ALS Reimbursement: Contracts frequently include language that requires the CON holder to pay the political subdivision a fee when a political subdivision paramedic provides care during transport to a hospital.

- **Resolution:** The CON holder should ensure that the proposed reimbursement is equal to the difference between the CON holder's Department-approved Advanced Life Support (ALS) and Basic Life Support (BLS) rates in effect at the time service is rendered.

Ambulance Operations Guidelines, Transfer of Patient Care: Many contracts contain provisions for the political subdivision's paramedics to provide care during transport to a facility.

- **Resolution:** The Department is supportive of the intent of this provision and will approve this requirement if the contract contains:
 - A protocol, signed by the administrative medical director of the CON holder, that outlines those clinical conditions or circumstances necessitating the political subdivision's paramedic continuing care during transport, and
 - Language obligating the political subdivision's paramedic's timely completion and submission of the Electronic Pre-hospital Care Record (e-PCR) to the CON holder and receiving facility.

Bariatric Ambulances: Many contracts are submitted with provisions requiring dedicated bariatric equipment and/or bariatric ambulances.

- **Resolution:** The Department does not favor dedicated bariatric ambulances with response zones limited to an individual political subdivision. The Department is prepared to approve regionally based bariatric ambulances that respond to other communities (within the CON boundaries) in close proximity. The contract should contain language identifying the bariatric ambulance's availability to respond to other nearby communities. Bariatric equipment (stronger stretchers) is usually approved.

Community Activities, Emergency Response Stand-by, Special Events Stand-by: Political subdivisions appropriately include contract provisions requiring the CON holder to provide ambulance coverage for special, short term events.

- **Resolution:** The Department intends to support this so long as the duration of the event is reasonable or the ambulance remains available to respond to calls for service. The CON holder should ensure that the contract limits the duration of the event to a reasonable length of time or states that the ambulance may respond to a call for service. In the event of a standby for a public safety event, for example a hazardous waste spill or hostage event, the contract should include language that will allow the CON holder to bill responsible parties for related costs or language that the political subdivision will bill the responsible party and reimburse the CON holder.

Continuous Service Delivery, Emergency Take Over, Interruption of Service: Contract language that provides a method for the political subdivision to take over the operation (equipment and/or staffing) of the CON holder's operations in case of default, contract compliance issues, or other causes are common.

- **Resolution:** This authority rests solely with the Director of the Department and language acknowledging this fact must be included in the contract. The contract should always include the following statement "... only if approved in advance by the Arizona Department of Health Services in accordance with A.R.S. § 36-2242."

Contract Administration: Some existing contracts include a provision whereby the CON holder agrees to reimburse a political subdivision for a percentage of a political subdivision contract administrator's salary.

- **Resolution:** For new contracts, this provision will NOT be approved. The Department would consider CON support for joint quality improvement activities with political subdivisions that target enhancement of clinical outcomes. Contract language must provide specific information on the intent, cost, and benefits associated with this provision so that the Department may make an informed decision.

Contract Extensions: Most contracts include a provision for contract extensions and renewals.

- **Resolution:** Contract language must require Department approval before any contract extensions, automatic extensions, or amendments are enacted.

Contract Labor: Some existing contracts contain provisions for the political subdivision staff to man one or more ambulances.

- **Resolution:** At a minimum, one of the members of the ambulance staff must be an employee of the CON holder. This employer/employee relationship may be met with direct employees or employees arranged via contract for personnel services.

Dedicated Ambulances: Many contracts include a specific number of dedicated ambulances and minimum equipment requirements for dedicated ambulances to service a political subdivision. The contract may also include language requiring specific ambulance stationing locations with the intent of minimizing response times during periods of increased volume.

- **Resolution:** This is one of the highest cost items in political subdivision contracts. In general, the Department is supportive of the intent of this provision but, because of the associated costs, must review these requirements with care. The CON holder should include language within the contract providing historic and projected ambulance call volumes. The contract should also include historic and projected numbers of dedicated ambulances. If there is a significant increase in the number of dedicated

ambulances, the CON holder should provide a written justification so that the Department has sufficient information to make an informed decision.

Electronic Patient Care Reporting (ePCR): Some contracts require that the CON holder participate in an ePCR program.

- **Resolution:** The Department is very supportive of any effort to collect patient care information electronically as this provides a much more robust platform to address quality improvement activities at the individual EMS agency level, the system level, and the state level. The Department encourages all EMS agencies to fully participate in the Premier EMS Agency Program. The CON holder should ensure that contract language stipulates that the CON holder will participate in agency, system, and state quality improvement efforts and will fully participate in the Premier EMS Agency Program, including submission of electronic data.

EMS Service Area, Automatic Aid Area, Operating Area, Primary Service Area: Contracts may contain a variety of different terminology reflecting two principal concepts: the normal day-to-day service area within the political subdivision's geographic boundaries; and areas outside of those boundaries that are part of the fire department's mutual aid agreement area.

- **Resolution:** The Department understands and respects that the political subdivision has established mutual aid agreements. Unfortunately, statutes and rules require that ambulances stay within their respective CON's unless they follow specific steps. Unless the CON holder provides a written addendum to the contract outlining how they intend to meet observance of service area exceptions outlined in A.A.C. R9-25-907 that can be verified by the Department, the contract language must state that all ambulance service, including mutual/automatic aid, will be limited to the CON holder's service area.

EMS System Communications and Dispatch Services Mobile Communication Terminals (MCT): Many contracts include requirements that the CON holder purchase, rent, or contract for communication equipment, services, and repair. The Department understands that it is important for all partners in the system be able to communicate reliably but also knows that this communication equipment, service, and repair is costly and that private providers must frequently operate in different communication systems using different equipment.

- **Resolution:** Because the Department understands the importance of good communication on system performance, it intends to support reasonable costs for communication equipment, service, and repair when the need is properly justified, the costs are fully described, and alternatives or phase-in options are offered. The CON holder should ensure that the contract language provides a clear description of all costs associated with the communication equipment, service, and repair by providing a per vehicle/call/year breakdown. The CON holder should describe the specific system functionality that will be secured by this contract provision and request a phased-in approach to reduce the front-end costs to the CON holder. If the political subdivision knows that its costs are different from those of neighboring service areas, this information should be provided with the contract so the Department has as much information as possible so that it can make an informed decision.

General Comments: It is not uncommon for the Department to raise questions about contractual language that is unclear and/or appears in several different locations within the contract. This does not necessarily mean that

the provision will be disapproved. These questions are usually labeled as a General Comment in the Department's written request for clarification or additional information.

- **Resolution:** Because contracts may last for several years, it is important that responses to questions provide sufficient information to enable both the current reviewer and a reviewer in subsequent years to understand the issue and how the contract will address the issue. Whenever possible, the CON holder should respond to a General Comment by expanding on the information provided in the contract and, if appropriate, use this response as an opportunity to describe how the contract provision will enhance patient outcomes, not impact rates and charges, and avoid conflict with CON statutes and rules.

Indemnity: Contracts frequently include language requiring one or more of the parties to indemnify the other.

- **Resolution:** Indemnity requirements must be substantially equal for both the CON holder and the political subdivision.

Non-Performance Penalties, Fines, or Liquidated Damages: Contracts frequently require that the CON holder perform certain operational aspects of their service at a specific standard, for example, achieving a specific response time threshold. If the CON holder does not meet those thresholds, the contract calls for a fine or penalty.

- **Resolution:** The Department intends to support this aspect of the contract so long as it relates to operational issues under the control of the ambulance company. The CON holder should ensure that these fines are related to operational issues under the control of the CON holder and include language in either the contract or submittal letter stating that any non-performance penalties, fines, or liquidated damages will not be included in establishing rates and charges as prescribed in A.A.C. R9-25-1106. All penalties or fines should be reported separately on the Ambulance Revenue and Cost Report (ARCR).

Performance Security Funds: On occasion, contracts are submitted that include language requiring the CON holder to establish an account or fund as security for the faithful performance of contract provisions.

- **Resolution:** The Department intends to support this provision so long as the CON holder has an opportunity to invoke a problem resolution process before funds can be removed. The CON holder should ensure that the contract clearly describes the problem resolution process and states that withdrawals from the account/fund will not occur unless the problem resolution process has not been effective. These withdrawals would need to be reported as non-performance penalties, fines, or liquidated damages on the ARCR.

Replacement of Supplies, Materials and Pharmaceuticals: Many contracts include a provision for either replacement or reimbursement of supplies, materials, and pharmaceuticals used by the political subdivision during a call.

- **Resolution:** The Department is not the only entity involved in this decision process. Political subdivisions should consult with their attorneys to ensure that the contract is in compliance with the Centers for Medicare and Medicaid Services (CMS) and the Drug Enforcement Administration (DEA) requirements. The Department is prepared to approve contracts that require repayment/replacement of supplies used by the political subdivision **ONLY** on calls that result in patient transport. Contract language must specifically acknowledge this limitation.

Response Time Requirements: Many contracts include specific language prescribing response time performance that exceeds the CON holder's response time requirements of the CON. Most contracts address the failure to comply with any contractual response time requirements, resulting in penalties or damages to the political subdivision.

- **Resolution:** The CON holder should ensure that contract language identifying penalties be reported separately on the CON holder's ARCR, pursuant to A.C.C. R9-25-1106(A)(16).

Training: Contracts frequently include language that requires that the CON holder makes available the personnel, equipment, and ambulances necessary to participate in special training, disaster drills, political subdivision operational orientation training, and continuing education within specified time-frames.

- **Resolution:** The Department supports inter-agency training opportunities but not requirements that obligate the CON holder to perform free training for the political subdivision's staff without an equal offer of free training by the political subdivision for the CON holder's staff. Optimally, contract requirements for training will take place on normal work days, or be scheduled far enough in advance that the CON holder can accommodate the requirement in the most cost effective manner possible.

Unsigned Contracts: Contracts are often submitted for a formal review without the contracting parties signing the agreement as an indication that the contract is in its final form and executable once approval is granted.

- **Resolution:** The CON holder should ensure that the contract has been signed by the contracting parties prior to submission to the Department for a formal review.

Vehicle Maintenance: Contracts frequently require that the ambulances meet certain maintenance/mileage/age requirements that are more stringent than those of the Department and contain provisions for the levying of fines if the CON holder fails to meet those specifications.

- **Resolution:** The CON holder should ensure that contract language provides specific information on the requirements and require that any fines be separately reported on the CON holders ARCR.